IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1337 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATILAL BHIKHUBHAI PATEL AND OTHERS
Versus
SHASHIKANT MUGANLAL PATEL

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Appearance :
MR DR BHATT for the applicants.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/02/2006

ORAL JUDGMENT

By filing this Revision Application under section 115 of the Civil Procedure Code, the petitioner original defendants have challenged the

judgment and order passed by learned Assistant Judge, Valsad at Navsari in Regular Civil Application No. 41 of 1999 whereby the order passed by Civil Judge below Exh. 18 in Regular Civil Suit No. 142 of 1998 has been set aside.

Regular Civil Suit No. 142/98 was filed by the respondent herein before the Civil Judge, S.D., Navsari for declaration of ownership of the suit properties under a registered will dated 19.3.1995 and a codicil dated 26.4.1995. As per the facts narrated by the appellate Judge in his judgment, the said properties were originally owned by Ravliben widow of Namabhai Hirabhai Patel. The said Ravliben died on 29.4.1995. Before death, Ravliben executed a will dated 19.3.1995 and also made a codicil whereby she gave her movable and immovable properties to the respondent herein. After her death, her immovable properties were mutated in the name of the respondent. For the movable properties, the respondent herein file one Civil Misc. [Succession] Application No. 34 of 1996 before Civil Judge, Senior Division, Navsari. The said application was dismissed by the trial Court on 22.4.1998. The same was challenged by the present respondent by way of appeal before this High Court. It seems that in the meanwhile since possession was disturbed by the defendant, the respondent herein file Regular Civil Suit No. 142 of 1998 claiming relief of declaration and injunction. In the aforesaid suit, the present petitioner gave an application, exh. 18, under section 11 and Order 7 Rule 11 (a) and (d), CPC on the ground that the suit is barred by resjudicata and the plaint is required to be rejected. Emphasis was placed on the decision of the trial Court in Civil Misc. [Succession] Application No. 34 of 1996. The learned trial judge, after hearing both the parties on Exh. 18, allowed the application believing that the present

suit is hit by the principles of res-judicata and consequently the learned Civil Judge also dismissed the suit. The said order was challenged by the original plaintiff by filing Regular Civil Appeal No. 41 of 1999 before the Assistant Judge, Valsad at Navsari. The learned Assistant Judge allowed the said appeal by setting aside the order passed below Exh.18 in R.C.S. No. 142 of 1998, restored the Civil Suit No. 142/98 and ordered to proceed with the said suit in accordance with law.

In paragraph15 of the order in Regular Civil Appeal No. 41 of 1999 the learned Assistant Judge held as under:

> "15. It transpires that the present appellant has filed on First Appeal No. 5093/98 challenging the Judgment and order dismissing Civil Misc. (Succession) Appl. No. 34 of 96, the said petition was sought to be withdrawn as the present appellant filed R.C.S. No. 142 of 98. The order passed by the Hon'ble High Court in the said First Appeal on15.12.98 is produced in this matter at Mark 17/1. It transpires that this order was not brought to the notice of the learned trial Judge. May be copy might have not been made available. On going through that order it transpires that as the present appellant has filed a civil suit No. 142 of 98 wherein same pleas about will are raised and issues arising for consideration in that appeal will also be raised and will be required to be decided in the said suit, and, therefore, the present appellant had withdrawn that appeal and the Hon'ble High Court also observed that the present appellant will have a right to agitate those grounds or contentions in that suit. This also makes it clear that the decision given in Succession Appl. No. 34/96 cannot operate as res-judicata or cannot operate as a bar to decide the question in the suit."

I am of the view that the order of the appellate court is not required to be interfered with, as in effect, it is merely a remand order. Ultimately all these points are required to be decided in Regular Civil Suit

No. 142 of 1998 which stands revived in view of the order of the appellate Court. In any case, the present Revision Application under section 115 cannot be entertained as it cannot be said that any jurisdictional error is committed by the appellate Court. Powers of this Court in revisional jurisdiction under section 115 of CPC is very limited. I do not find any substance in the Revision Application. However, it is clarified that it will be open to the parties to raise all available grounds before the trial Court and it will be also open to the trial Court to decide all points in accordance with law. The learned trial Judge is directed to proceed with the hearing of Regular Civil Suit No.142 of 1998 in accordance with law. Looking to the fact that the suit is of the year 1998, the trial Judge shall try to decide the same as early as possible, and in any case, within a period of six months from the date of receipt of the writ of this Court.

Registry is directed to send writ forthwith.

This Revision Application stands rejected with the aforesaid observations. Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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